TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 821. 88.

THE CLEVELAND TRUST COMPANY, PLAINTIFF IN ERROR,

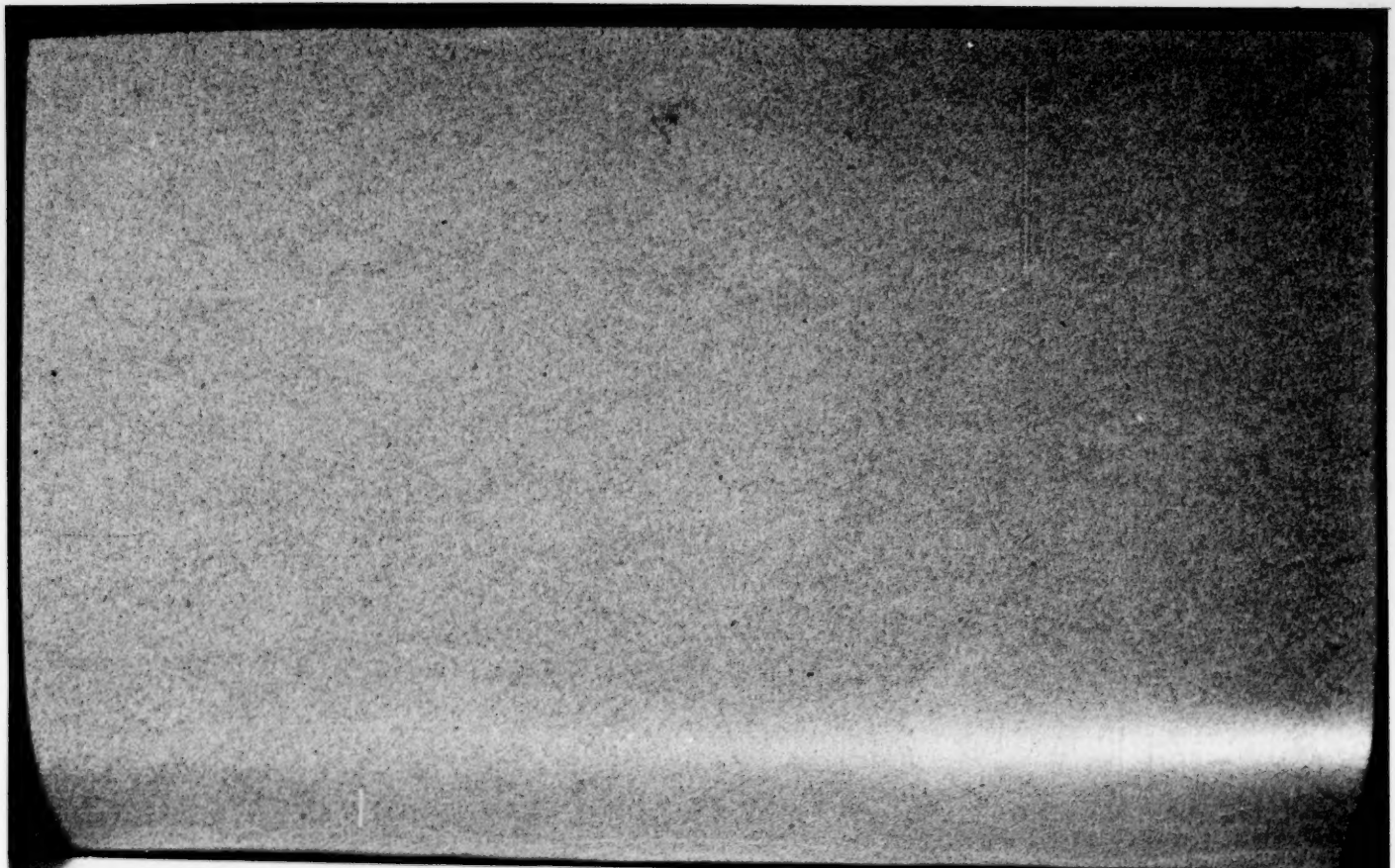
vs.

M. A. LANDER, TREASURER OF CUYAHOGA COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED JUNE 20, 1900.

(17,806.)



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THE CLEVELAND TRUST COMPANY, PLAINTIFF IN ERROR,

vs.

M. A. LANDER, TREASURER OF CUYAHOGA COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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1 In the Supreme Court of Ohio.

THE CLEVELAND TRUST CO., Plaintiff in Error,
vs.
M. A. LANDER, as Treasurer, Defendant in Error. } No. 6972.

Error to circuit court of Cuyahoga county.

Record.

Garfield, Garfield & Howe, attorneys for plaintiff in error.
P. H. Kaiser and F. L. Taft, attorneys for defendant in error.

Filed Feb. 15, 1900, in supreme court of Ohio.
J. B. ALLEN, *Clerk.*

2 In the Supreme Court of Ohio.

THE CLEVELAND TRUST COMPANY, Plaintiff in Error,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant in Error.

Petition in Error.

The plaintiff in error says that at the January term, 1899, of the court of common pleas of Cuyahoga county, defendant in error recovered a judgment by the consideration of said court against the plaintiff in error in an action then pending therein, wherein plaintiff in error was plaintiff, and defendant in error was defendant; thereafter in the January term, 1900, of the circuit court of Cuyahoga county, said judgment of the common pleas court was affirmed by the circuit court of said county in proceedings in error; a duly certified transcript of the docket and journal entries and record, together with the original papers and pleadings of the case are filed herewith.

There is error in the said record and proceedings in this respect, to wit:

I. Said common pleas court erred in sustaining the demurrer of the defendant in error to the petition of plaintiff in error, and said circuit court erred in affirming said judgment.

II. Said common pleas court erred in rendering judgment for said defendant in error when it should have been given for said plaintiff in error and said circuit court erred in affirming the same.

3 The plaintiff in error therefore prays that said judgment may be reversed and that it be restored to all things it has lost by reason thereof.

GARFIELD, GARFIELD & HOWE,
Attorneys for The Cleveland Trust Co., Plaintiff in Error.

Waiver of Process.

Waiving the issuance and service of summons in error, we hereby enter the appearance of the defendant in error, M. A. Lander, treasurer of Cuyahoga county, this 1st day of February, 1900.

P. H. KAISER AND
F. L. TAFT,
Att'ys for Def't in Error.

4 THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Court of Common Pleas.

THE CLEVELAND TRUST COMPANY, Plaintiff,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant.

Petition.

The plaintiff says that it is a corporation duly organized under the laws of the State of Ohio, and was incorporated for the purpose of and is now engaged in doing a banking business in the city of Cleveland in said State; that the defendant is treasurer of Cuyahoga county, having in his possession the duplicate containing the list of taxes for the year 1898, including all taxes assessed against the plaintiff.

The plaintiff further represents and avers that it has a capital stock of five hundred thousand dollars ($500,000) divided into five thousand (5,000) shares of one hundred dollars ($100) each, all of which is paid up, and for which certificates are outstanding and owned by a large number of persons, most of whom reside in the State of Ohio; that in accordance with section 2765 of the Revised Statutes of Ohio, then and now in force, the treasurer of the plaintiff duly reported in duplicate to the auditor of said county of Cuyahoga, the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday of May, 1898, together with a full statement of the names and residences of the stockholders therein, and with the number of shares held by each and the par value thereof as required by said
5 statute; that included in said return so made by said treasurer was the real estate owned by the plaintiff, returned at $25,000.00, which is separately assessed and charged on the tax duplicate of said county, and the tax thereon paid to the treasurer of said county, the defendant, aside from the taxes set forth in this petition; that said return also included one hundred and seventy-four (174) bonds of the United States of the denomination of one thousand dollars ($1,000) each, then and for a long time prior thereto owned by the plaintiff and in which the plaintiff had invested part of its capital stock; that said bonds of the United States are and were at the time of the making of said return non-taxable

under and by virtue of section 3701 of the Revised Statutes of the United States; that the value placed upon said bonds by the treasurer of the plaintiff was $213,274.84, and the same was deducted from the $500,000 par value of paid-in capital stock included in said return among the liabilities of the plaintiff, leaving a balance as shown by said returns of $286,725.19.

The plaintiff further says that said county auditor thereupon proceeded as required by sec. 2766 of the Revised Statutes of Ohio to fix and did fix the total value of the shares of the capital stock of the plaintiff at $338,700, exclusive of the assessed value of its real estate; that said auditor in fixing the value of such shares did, without lawful authority, include said U. S. Government bonds, valuing the same at $213,274.84—that is to say, said auditor refused to allow the deduction of said amount last named from the $500,000 par value of paid-in capital stock of the plaintiff as shown upon its return for 1898; that no notice of such addition and the consequent enhanced valuation placed upon the total shares of plaintiff's capital stock was, until the 11th day of November, 1898, given to the plaintiff or to any of its stockholders, nor did the plaintiff or any of its stockholders know that said U. S. Government bonds had been included in fixing such valuation of shares until said 10th day of November, 1898; that it is the regular custom of banks and banking associations throughout the State of Ohio to deduct the value of Government bonds owned by them from the paid-in capital stock returned,
6 although not so apparent upon the face of their returns to the several county auditors; that said bonds were by the banks and banking associations of this State so deducted in the return for 1897; that similar deductions of U. S. Government bonds are likewise made by unincorporated banks in the State of Ohio under and by virtue of R. S. of State of Ohio, sec. 2759; that the auditor of Cuyahoga county and the county auditors elsewhere throughout the State, as this plaintiff is informed and believes, did not include U. S. Government bonds so owned in fixing the total value for 1898 of the shares of the several incorporated banks of Ohio as directed by section 2766 of the Revised Statutes of Ohio.

That the auditor of Cuyahoga county thereafter entered said valuation upon the tax duplicate of said county for the year 1898, and did assess taxes against the same at the rate of .02955 cents on each dollar's valuation, which was the rate of taxation for the taxes assessed for the year 1898 within said county, city and sewer district, and which on said valuation of shares amounted to $10,510.94.

The plaintiff further avers that by section 1042 of the Revised Statutes of Ohio, it is made the duty of the auditor of Cuyahoga county, on November 1st of each year, to deliver to the county treasurer a true copy or duplicate of the books containing the tax-list required to be made by him for the year.

Wherefore the plaintiff submits that said auditor of Cuyahoga county had no authority or power to include said U. S. Government bonds at a valuation of $213,274.84 or any other sum in fixing the valuation of the shares of this plaintiff; and that his action in respect thereof was totally void and of no effect.

10 THE STATE OF OHIO, } ss.
Cuyahoga County, }

In the Court of Common Pleas.

THE CLEVELAND TRUST COMPANY, Plaintiff,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant.

Demurrer.

Now comes the defendant and demurs to the petition for the reason that the same does not set forth facts sufficient to constitute a cause of action.

Brief.

No deduction other than the duplicate value of the real estate owned by the bank, is required by sec. 2766.

Oral argument is requested.

P. H. KAISER AND
F. L. TAFT,
Attorneys for Defendant.

11 THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Court of Common Pleas.

THE CLEVELAND TRUST COMPANY, Plaintiff,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant.

Motion for New Trial.

The plaintiff moves for a new trial for the following reason, to wit:

That the court erred in sustaining the demurrer of the defendant to the petition of the plaintiff.

GARFIELD, GARFIELD & HOWE,
Attorneys for Plaintiff.

12 THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Circuit Court.

THE CLEVELAND TRUST COMPANY, Plaintiff in Error,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant in Error.

Petition in Error.

The plaintiff in error says that at the January term, 1899, of the court of common pleas of Cuyahoga county, the defendant in error recovered a judgment by consideration of said court against the

plaintiff in error in an action then pending in said court, wherein the plaintiff in error was plaintiff, and the defendant in error was defendant.

A transcript of the docket and journal entries whereof and the original papers and pleadings are filed herewith.

There is error in said record and proceedings prejudicial to the plaintiff in error in this, to wit:

1. Said court erred in sustaining the demurrer of the defendant to the petition of the plaintiff.
2. Said court erred in rendering judgment against the plaintiff for costs.
3. Said court erred in overruling the motion for a new trial.
4. Said judgment was contrary to law, as well as the statutes and Constitution of the United States.

13 Wherefore the plaintiff in error prays that said judgment of the court of common pleas be reversed and that the plaintiff in error be restored to all things lost by reason thereof.

GARFIELD, GARFIELD & HOWE,
Attorneys for Plaintiff in Error.

Waiver of Process.

The defendant in error waives the issuance and service of summons in error and enters its appearance herein.

April 4, 1899.

P. H. KAISER AND
F. L. TAFT,
Attorneys for Defendant in Error.

14 *Docket and Journal Entries.*

THE STATE OF OHIO, } ss:
Cuyahoga County, }

In the Court of Common Pleas.

THE CLEVELAND TRUST COMPANY, Plaintiff, vs. M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant. } C. C. No., 2363: C. P. No., 65722.

Injunction and relief.

1899, January term, begun and held January 19th, 1899.

January 19th.—Petition and precipe filed and
To court: A restraining order is allowed in this cause, as prayed for in the petition, on plaintiff giving bond in $8,000.00, to continue until further order of the court. Jour. 134, page 31. Whereupon undertaking in $8,000.00 with H. A. Garfield as surety filed and summons with notice of restraining order issued.

January 25th, 1899.—Undertaking for restraining order in $8,000.00 with American Surety Co., as surety filed.

January 31st, 1899.—Demurrer by defendant to petition with brief filed.

March 1st, 1899.—To court: The demurrer to the petition is heard and sustained at the plaintiff's costs, for which judgment is rendered against it. To which ruling plaintiff excepts. Jour. 134, page 229.

March 3rd, 1899.—Motion by plaintiff for a new trial filed.

15 March 28th, 1899.—To court: The motion by plaintiff for a new trial is heard and refused, and the plaintiff not desiring to plead further, it is now considered that said defendant go hence without day and recover of said plaintiff his costs herein and judgment is rendered against the plaintiff for its costs herein. Jour. 134, page 382.

April 5th, 1899.—Petition in error filed in circuit court by plaintiff.

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

I, Harry L. Vail, clerk of the court of common pleas, in and for said county, do hereby certify that the above is a true transcript of the docket and journal entries of said court, in the above-entitled cause.

And I also certify that the enclosed are the original papers and pleadings filed in said cause, in the said court of common pleas.

Attest, my hand and the seal of said court, at Cleveland, this 5th day of April, 1899.

[SEAL.] HARRY L. VAIL, *Clerk,*
By W. R. COATES,
Deputy Clerk.

16 *Docket and Journal Entries.*

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

In the Circuit Court.

THE CLEVELAND TRUST COMPANY, Plaintiff in Error,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant in Error.

C. C. No., 2363;
C. P. No., 65722.

Error to common pleas.

January Term, 1900.

April 5.—Petition in error, waiver of process, transcript and original papers from common pleas filed.

Jan. 22, 1900.—To court: This cause came on to be heard upon the petition in error, original papers and pleadings, and the transcript of the record in the court of common pleas, and was argued

y counsel, and on consideration of all the assigned errors, the judg-ent of the said court of common pleas is affirmed, there being, owever, in the opinion of the court, reasonable ground for this pro-eding in error.

It is therefore considered that said defendant in error recover of id plaintiff in error his costs herein. Ordered that a special man-ate be sent to the court of common pleas to carry this judgment to execution. To which ruling and judgment the plaintiff in ror excepts. Journal 7, 219.

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

I, Harry L. Vail, clerk of the circuit court in and for said county, o hereby certify that the above is a true transcript of the docket d journal entries of said court in the above-entitled cause, The leveland Trust Company *vs.* M. A. Lander, as treasurer.

I also certify that the enclosed are the original papers and plead-gs filed in said cause in said circuit court.

Witness my hand and seal of said court, at Cleveland, this 29th y of January, 1900.

HARRY L. VAIL, *Clerk,*
By W. R. COATES,
Deputy Clerk.

STATE OF OHIO, }
City of Columbus, }

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, reby certify that the printed record hereto attached is a true copy the printed record filed in cause No. 6972, The Cleveland Trust mpany against M. A. Lander, treasurer, and used by this court in e consideration of said cause.

In witness whereof I have hereunto subscribed my name and fixed the seal of said court this seventh day of May, A. D. 1900.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

19 *Certified Transcript of Docket and Journal Entries.*

THE STATE OF OHIO, } ss.:
City of Columbus, }

In the Supreme Court of Ohio, January Term, A. D. 1900.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

THE CLEVELAND TRUST COMPANY, Plaintiff in Error,
vs.
M. A. LANDER, Treasurer of Cuyahoga County, Ohio, Defendant in Error.
} #6972. Error to the Circuit Court of Cuyahoga County.

Feb'y 15, 1900. Petition in error & waiver of summons filed.
" " " Circuit court transcript filed.
" " " Original papers filed.
" " " Printed record and proof of service filed.
" " " Motion by plaintiff to advance, notice, and consent filed.
" 20, " Journal entry:
"Motion by plaintiff to advance cause No. 6972 on the general docket."
"Ordered by the court that said motion be, and the same is hereby, sustained. Cause set for hearing on oral argument March 8th, 1900." O. B. No. 17, p. 82.
" 24, " Receipted bill for printing record filed.
Mar. 3, " Plaintiff's printed brief filed.
" 8, " Defendant's printed brief and proof of service filed.
" 20, " Journal entry:
"This cause came on to be heard upon the transcript of the record of the circuit court of Cuyahoga county and was argued by counsel. On consideration whereof it is ordered and adjudged by this court that the judgment of the said circuit court be, and
20 the same is hereby, affirmed; and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.
It is further ordered that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $—.
Ordered that a special mandate be sent to the court of common pleas of Cuyahoga county to carry this judgment into execution.
Ordered that a copy of this entry be certified to the clerk of the circuit court of Cuyahoga county 'for entry.'" O. B. No. 17, p. 120.

Mar. 27, 1900. Mandate issued.
May 15, " Journal entry:

"This cause came on to be heard in the supreme court of Ohio, which court is the highest court of record in said State, upon the transcript of the record of the circuit court of Cuyahoga county and was argued by counsel, and on consideration whereof it was ordered, adjudged, and decreed by this court that the judgment of the said circuit court of Cuyahoga county be, and the same is hereby, affirmed; and it is hereby certified that in rendering judgment in this cause it was necessary to construe section 3701 of the Revised Statutes of the United States, and, upon the record and the briefs and oral argument of counsel for The Cleveland Trust Company, the plaintiff in error, it was claimed and relied upon that, under said section 3701, the said The Cleveland Trust Company was entitled to deduct for the purposes of taxation the amount of its holdings in bonds of the United States of America, and this court in this judgment decided and held against the construction of the said section as so claimed by counsel for the plaintiff in error upon the ground and for the reasons stated in the opinion of the report of this case.

And it is further ordered that the said plaintiff in error pay the costs made in this court and in the circuit court and in the court of common pleas, and in default that execution issue therefor; and this cause is remanded to the court of common pleas of Cuyahoga county for execution." O. B. No. 17, p. 189.

May 22, 1900. Supersedeas bond filed.

21 Supreme Court of Ohio.

THE CLEVELAND TRUST COMPANY)
vs.
M. A. LANDER, Treasurer of Cuyahoga County, Ohio.)

STATE OF OHIO,)
City of Columbus,) ss:

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the decision in this case was handed down by the court on March 20th, 1900, and, upon application of counsel for plaintiff in error to have the entry of the judgment show that a constitutional question was raised, the court ordered the certificate above set forth, showing that fact, to be entered May 15th, 1900, and that the foregoing transcript of the docket and journal entries in cause The Cleveland Trust Company *vs.* M. A. Lander, treasurer of Cuyahoga

county, Ohio, is truly taken and correctly copied from the records of said court, to wit, Minute Book No. 20, page 569, and Order Book No. 17, pages 82, 120, and 189.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this fifth day of June, A. D. 1900.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

22 [Endorsed:] Supreme court of Ohio. The Cleveland Trust Co. *vs.* M. A. Lander, treasurer, etc. Certified transcript of docket and journal entries.

23 Supreme Court of Ohio.

THE CLEVELAND TRUST CO.
v.
LANDER, Treasurer.

Taxation of national bank shares—Restriction of section 5219, U. S. Revised Statutes—Right of State to tax shares—Sections 2672, 2765, 2766 and 2769, Revised Statutes—Sections 3701 and 5219, U. S. Revised Statutes—Limitation of section 3 of article 12 and section 4 of article 13 of constitution—Prohibition of double taxation of bank property:

1. The restriction in section 5219, Revised Statutes of the United States, as to the taxation of national bank shares at a rate not greater than on other moneyed capital, requires that both the rate per centum of taxation and the value of the assessment against such shares, shall not be greater than on other moneyed capital in the hands of individual citizens of the State.
2. The right granted to a State to tax shares of national banks, cannot be exercised by a State, unless it imposes upon the moneyed capital in the hands of individual citizens of the State, a tax at least equal in amount upon the same valuation, as is imposed upon national bank shares.
3. Section 2762, Revised Statutes, in requiring the shares of incorporated banks to be listed for taxation at their true value in money, is not in conflict with section 3701, Revised Statutes of the United States.
4. Sections 2764, 2765, 2766 and 2769, Revised Statutes, provide a method for fixing the value of the shares of a bank for taxation. The shares are taxed, and not the property of the bank except its real estate.
5. There is nothing in the constitution of this State to prevent the General Assembly from conforming our tax laws to the restrictions contained in section 5219, Revised Statutes of the United States, as that section has been construed by the Supreme Court.

6. The amount of the property of an incorporated State bank, less its non-taxable bonds, is not usually the equivalent of the amount of all its shares. If both are the same in amount, the General Assembly, in conforming to the restrictions in section 5219, Revised Statutes of the United States, may impose the tax, either upon the property, or upon the shares; but if they differ materially in amount, the tax must be upon the shares.
7. The limitations in section 3 of article 12, and section 4 of article 13 of the constitution, prohibit double taxation of the property of banks, bankers and corporations.

(Decided March 20, 1900.)

Error to the circuit court of Cuyahoga county.

The Cleveland Trust Company, plaintiff below, and also plaintiff in error here, is a corporation organized and incorporated under the statutes of this State, and is engaged in the banking business at the city of Cleveland. It has a paid-up capital stock of $500,000 divided into shares of one hundred dollars each. It owns and holds 174 bonds of the United States, each of the denomination of one thousand dollars. In making its return for taxation in May, 1898, to the county auditor, it deducted the value of said bonds from its capital stock and returned the balance, less the duplicate value of its real estate, to the county auditor for taxation. The county auditor added the amount of the value of the bonds to the return, and upon the basis of the amount of the return so increased by said addition, fixed the value of each share of its capital stock, and entered such shares upon the duplicate for taxation against the holders of such shares, and delivered the duplicate to the county treasurer, who proceeded to collect the taxes so assessed. Thereupon the trust com-
24 pany began its action against the treasurer, seeking to enjoin so much of the taxes as were levied by reason of the valuation placed upon said bonds and so added to said return, and tendered payment of the taxes levied upon its return as originally made by it. The ground upon which the injunction was asked is, that the United States bonds are non-taxable under section 3701, Revised Statutes of the United States, and "that it is the regular custom of banks and banking associations throughout the State of Ohio to deduct the value of Government bonds owned by them from the paid-in capital stock returned, although not so apparent upon the face of their returns to the several county auditors; that said bonds were by the banks and banking associations of this State so deducted in the returns for 1897; that similar deductions of United States Government bonds are likewise made by unincorporated banks in the State of Ohio under and by virtue of Revised Statutes of the State of Ohio, section 2759; that the auditor of Cuyahoga county, and the county auditors elsewhere throughout the State, as this plaintiff is informed and believes, did not include United States Government bonds so owned in fixing the total value for 1898 of the shares of the several incorporated banks of Ohio, as directed by section 2766 of the Revised Statutes of Ohio."

To this petition the county treasurer by his counsel demurred upon the ground that it did not state facts sufficient to constitute a cause of action.

The common pleas sustained the demurrer, and the plaintiff not desiring to plead further, the court rendered final judgment dismissing the petition. The circuit court affirmed the judgment. Thereupon the trust company filed its petition in this court, seeking to reverse the judgments below.

Garfield, Garfield & Howe, for plaintiff in error.
P. H. Kaiser and F. L. Taft, for defendant in error.

BURKET, *J.*:

The petition is in due and proper form, so that the demurrer is upon the merits of the cause, and not upon the form of the petition.

The taxation of banks and banking associations is regulated in this State by statute, and therefore the custom of banks and banking associations can avail nothing against such public statutes; neither can the acts or official course of procedure of county auditors make lawful that which is in conflict with such statutes. Custom cannot prevail over a statute. If the county auditors have been derelict in their duties, as to the taxation of banks, bankers, banking associations or the stock or shares of such corporations, the proper remedy is, not to still further transgress the law by remitting still other taxes in a vain effort to secure equality, but by bringing all up to the standard of the statute, and thereby securing equality of taxation as near as may be. Wagoner *v.* Loomis, 37 Ohio St., 571.

The demurrer was therefore properly sustained to the petition in so far as it founds its cause for relief upon the custom of banks, bankers and banking associations, and the acts and course of proceeding of county auditors in conflict with the statutes of the State.

We will next consider the petition as founded upon the ground that the Government bonds are non-taxable, under section 3701, Revised Statutes of the United States. This section is *in pari materia* with section 5219, and both must be read together. They are as follows:

"SECTION 3701. All stocks, bonds, treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority."

"SECTION 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not else-

where. Nothing herein shall be construed to exempt the real property of associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed."

Section 5219 was passed long after 3701, and has a modifying influence on the latter. Before the passage of 5219 it was held by the Supreme Court of the United States in Bank Tax cases, 2 Wallace, 200, that United States bonds owned and held by a bank must be deducted from the amount of its capital in making its returns for taxation; but afterward it was held by the same court that the value of the bank shares might be fixed upon the whole capital stock including the bank's investments in Government bonds. Van Allen *v.* The Assessors, 3 Wallace, 573, and many subsequent cases.

So that the holding now is that shares in national banks, and in incorporated State banks, may be taxed at their true value in money including in such value all Government bonds owned and held by such bank. People *v.* The Commissioners, 4 Wallace, 244; Bradley *v.* The People, 4 Wallace, 459; Frazer *v.* Siebern, 16 Ohio St., 614; section 2762, Revised Statutes of Ohio.

In every respect, except the issuing of bills to circulate as money, State banks carry on a similar business, and operations and investments of a like character as national banks, and it is therefore proper to compare the investments of capital in such banks with capital invested in national bank shares. That capital invested in State banks which do not issue bills, is moneyed capital in the hands of individual citizens as that term is used in said section 5219 is shown in the case of Mercantile Bank *v.* New York, 121 U. S., 138, where the court in speaking of such banks and the change in said section as amended in 1868, say: "Of course, so far as investments in such banks are moneyed capital in the hands of individuals, they are included in the clause as it now stands." And being so included, that is, being capital which comes directly in competition with capital invested in national bank shares, it follows that the taxation on national bank shares cannot be greater than upon capital invested in State banks, whether the taxation on State banks be upon their shares or upon their taxable capital. In that case the court say: "A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their values as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of State laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to State taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business, and operations and investments of a like character." See also First National Bank of Garnett *v.* Ayers, 160 U. S., 660.

It is urged that section 5219 provides only that the rate, that is, the per centum, on the fixed valuation, shall not be higher on national bank shares than on other moneyed capital, and the language

used in Van Allen *v.* The Assessors, 3 Wallace, 573; People *v.* Commissioners, 4 Wallace, 244, and the holding of this court in Frazer *v.* Siebern, 16 Ohio St., 614, would seem to support this view; but when we turn to the later cases of People *v.* Weaver, 100 U. S., 539; Cummings *v.* National Bank, 101 U. S., 153; Supervisors *v.* Stanley, 105 U. S., 305; Boyer *v.* Boyer, 113 U. S., 689, and Williams *v.* Supervisors, 122 U. S., 154, we find that it is not only the
26 rate per centum, but also the valuation, so that having the rate and valuation of national bank shares, the same as other moneyed capital, the taxation will be the same, which is the aim and purpose of said section 5219. If the same rate should be preserved and a much higher valuation of such shares allowed, the tax to be paid on such shares would be higher than on other moneyed capital, and that would violate the intention of the section in question. Section 5219 was materially changed by the amendment of February 10, 1868, whereby the provision as to the tax on shares of State banks was omitted, and the restriction that the taxation on national bank shares shall not be at a greater rate than on other moneyed capital, was inserted. As the section now stands it is the taxation, and not merely the per cent., that cannot be at a greater rate than on other moneyed capital. To make the taxation the same as on other moneyed capital, it is necessary that both the rate and valuation should be the same. And this rule as to the rate and valuation prevails in this State. In Exchange Bank *v.* Hines, 3 Ohio St., 1, we find the following on page 15: "Taxing by a uniform rule requires uniformity in the mode of the assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of the assessment, as well as in the rate of taxation." The restriction therefore in said section 5219, to the effect that taxation on national bank shares "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," means that both the rate per centum and the valuation on national bank shares shall not be greater than on other moneyed capital. From this it follows that if the Government bonds held by a national bank are included in its return for taxation, from which the value of its shares is determined, the same must be done in the returns of incorporated State banks. To allow incorporated State banks to deduct their Government bonds from their returns for taxation, and deny that right to national banks, would be to compel the latter to pay greater taxation on the same investment than the former. To prevent such a result was the object of said section 5219. It therefore follows that in order to retain the right to tax national bank shares without deducting the bonds held by the bank from its return, we must in like manner tax the shares of incorporated State banks, or else impose a tax of equal amount upon the property of State banks. The case of Van Slyke *v.* The State, 23 Wis., 655, affirmed in 154 U. S., 581, does not conflict with this conclusion. In that case the tax upon the property of the bank was the full equivalent of a tax upon its shares, and that being so, it could make no difference whether the tax was

called a tax on shares, or on the capital, so long as the amount was in the proper sum, and no injustice was done to any one. The case was affirmed by the Supreme Court of the United States upon the authority of National Bank *v.* Commonwealth, 9 Wallace, 353; Lionberger *v.* Rouse, 9 Wallace, 468, which cases clearly recognize the rule that national bank shares cannot be taxed differently from State banks or their shares as to the amount of the tax.

The doctrine that the capital of a bank is the equivalent of all its shares, upon which the Wisconsin case was decided by the State court, and which happened to be true in that case, has been so often and emphatically repudiated by the Supreme Court of the United States that it cannot now be successfully relied upon. Owensboro National Bank *v.* Owensboro, 173 U. S., 664, and cases there cited. It is true, however, that if in any particular case the amount of the taxable capital substantially equals the amount of all the shares, that it matters not whether, as to an incorporated State bank, the tax is upon the capital, or upon the shares, as the tax by either mode would be the same in amount. But as the amount of the taxable capital may be much less than the amount of all the shares,
27 and always is so where a bank owns and holds non-taxable bonds, the doctrine of taxation of the capital being the equivalent of taxation of all the shares has been repudiated by the Supreme Court of the United States, and we are bound by those decisions. Our statutes as to taxation of banks and shares in banks, as well as said section 5219, have been revised and changed since the case of Frazer *v.* Siebern, 16 Ohio St., 614, and the statement in that case that the limitation as to other moneyed capital refers merely to the percentage of tax to be levied, has not been approved by the Supreme Court of the United States, but has been ruled differently by that court in cases above cited. That case is therefore not an authority as to the force, effect and construction of our present statutes on that subject, nor as to the present restriction in said section 5219, as to the rate of taxation on national bank shares. But as to the proposition that the taxation on national bank shares cannot be greater than the taxation on State banks or their shares, that case is sound.

It is also urged that when section 5219 mentions "other moneyed capital in the hands of individuals," it means other taxable moneyed capital, and that as Federal bonds are not taxable, they should be deducted from the return of the bank before fixing the amount from which to ascertain the value of each share, and People *v.* Commissioners, 4 Wallace, 244, 256, and Mercantile Bank *v.* New York, 121 U. S., 138, are cited and relied upon. Those cases do say that the phrase means "other taxable moneyed capital." But conceding that to be the meaning, it does not aid the cause of the plaintiff in error. Certainly the meaning is "taxable capital," because if it meant non-taxable capital, the shares of national banks could not be taxed at all. And here lies the distinction, the tax is upon the shares, and not upon the capital. If the tax was on the capital, the Federal bonds would have to be deducted, but being upon the shares, no such deduction is required, allowed or authorized. A State has the

power to tax both the capital and stock or shares of a corporation, unless prohibited by its constitution, and to do so would not be double taxation. Owensboro National Bank *v.* Owensboro, 173 U. S., 664, 681, 682.

It is urged against the Van Allen case, and other like New York cases, that they are not applicable in this State, because New York has no constitutional provisions like ours in reference to taxation. By this is meant that New York was not hindered by such constitutional limitations and restrictions, and was therefore free to pass laws conforming to the principles of the Van Allen case, while Ohio is so restricted by its constitution as to make it impossible to conform to that case. As the Constitution of the United States, and the acts of Congress passed in pursuance thereof, are the supreme law of the land, it may well be doubted whether the constitution of a State is of sufficient vigor to serve as an excuse for not conforming to the acts of Congress. Should we be unable to conform to section 5219 and the Van Allen case, we would be denied the right to tax national bank shares. Such shares being personal property, are required to be taxed under the provisions of our constitution: and if the claim of the plaintiff in error is right, in this regard, it would lead to the absurd result, that by reason of our constitution we cannot tax such shares, and by reason of the same instrument we must tax them.

In the case of Lionberger *v.* Rouse, 9 Wallace, 468, the State of Missouri was bound by a contract with two banks whereby it was not able to conform to the Van Allen case as to those two banks, but it conformed as to all of its other banks, and the Supreme Court of the United States held that as the State had done all within its power to conform to the laws of the United States, it might tax national bank shares at the same rate as its own banks, other than said two which held such contract; but we know of no case, and none has been cited, wherein a State has been excused from
28 conforming to section 5219 and the Van Allen case, by reason of a limitation in its constitution, and still allowed to tax the shares of national banks the same as if it had so conformed. Besides, there is no provision, limitation or restriction in our constitution to prevent us from conforming to the act of Congress, and the decisions of the United States Supreme Court, as will hereinafter appear.

Our constitution has no provision as to non-taxable Government bonds, and such bonds having been issued, and national banks thereafter established under acts of Congress, with limited power of taxation granted to the States upon the shares of such banks, it became necessary to revise and conform our tax laws to the new order of things under said sections 3701 and 5219, and our own State constitution, to the end that we might exercise the right to tax such national bank shares, and at the same time observe the provisions of our constitution as to equality of taxation. In securing equality of taxation, it must be borne in mind that exact equality is impossible and that inequalities which cannot be remedied without an infraction of the Constitution or acts of Congress, are, and of right should be, disregarded.

As unincorporated banks are allowed to deduct their non-taxable bonds from their assets, and incorporated banks are not allowed to make such deductions in fixing the amount upon which the value of the shares is calculated, it is urged that there is an inequality in taxation produced thereby which violates that principle of the Constitution which aims at equal taxation. Whether this produces such inequality as calls for a remedy it is impossible to determine. The unincorporated bank pays taxes on all of its property except non-taxable bonds, while the value of the shares of the incorporated bank is based upon the value in money of the tangible property of the bank, including such bonds, but nothing is added under our statute for the value of the franchise and privilege of carrying on a corporate business. This intangible and untaxed property of the corporation may, and often does, exceed the value of the non-taxable bonds held by unincorporated banks or individuals, and in some of the States heavy taxes are imposed on such property. The two kinds of banks cannot well be assessed by the same statute, because the unincorporated bank has no shares, no franchise, and no privilege to carry on a corporate business in which there is only a limited liability for the debts of the bank. Both are to be so taxed as to bear a burden equal to that borne by individuals, and the obligation is upon the General Assembly to pass laws to that end.

Section four of article thirteen of the constitution, provides that the property of corporations shall be subject to taxation the same as the property of individuals. Section three of article twelve, provides that the General Assembly shall provide by law for taxing all the property of banks and bankers, without deduction, so that all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals.

And section two of article twelve, provides that laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money. Then follows certain exemptions of personal property, and of an amount not exceeding two hundred dollars to each individual.

It will be noticed that the property of corporations shall be subject to taxation the same as the property of individuals. This implies that corporations shall be taxed, either by the same methods as individuals, or by separate statutes producing the same result, as in the opinion of the General Assembly shall be best. It will further be noticed that banks and bankers shall be taxed upon all their property without deduction, by such laws as will compel them to bear a burden equal to that imposed upon the property of individuals. This clearly implies that separate statutes are to be
29 passed for the taxation of the property of banks and bankers, because they are taxed without deduction, and a deduction not exceeding two hundred dollars is allowed to individuals. This matter of deductions, if nothing else, makes it necessary to have statutes for the taxation of the property of banks and bankers different from that of individuals.

Section two of article twelve seems to make provision for the

passage of laws for the taxation of the property of individuals only, but it is broad enough in its terms to include the property of banks and bankers and of all other corporations. But as separate provision is made for the taxation of banks and bankers in section three of the same article, and for the taxation of the property of corporations in section four of the next succeeding article, it seems to be thereby clearly indicated that each of those sections should have a distinct force, effect and scope of its own, but in connection with the others, so as to make a harmonious whole. It is conceded by Thurman, J., in Bank *v.* Hines, 3 Ohio St., 1, 46, that said section three has its separate force and scope, and it was said by him that there was no absolute necessity for said section four, because without it, section two would have embraced corporations. But it will be noticed that he does not say that with section four in the constitution, section two embraces the same subject. Having been thought of sufficient importance to be inserted in the constitution by the convention, and adopted by the people, section four must be presumed and held to have an object and force of its own, but in connection with said section two; and that object and scope is to enable the General Assembly to pass laws peculiarly suited and fitted for the listing and taxation of the property of corporations, so as to secure taxation on their property the same as on the property of individuals. It was then, as now, well known that in the extensive, scattered and diversified business and interests of corporations it is often difficult to bring upon the tax duplicate the full valuation of their property, and that to secure that end it might be necessary to pass laws applicable to corporations and not applicable to individuals. The same is true as to banks and bankers; but both as to corporations and as to banks and bankers, the taxation is restricted so as to be the same as that of individuals, and to thereby prevent oppression. While the courts cannot make tax laws, they can prevent inequality and oppression by enforcing the restrictions of the constitution.

Shortly after the decision of Van Allen *v.* The Assessors, 3 Wallace, 573, the General Assembly of this State enacted statutes conforming to that decision, and providing for the taxation of shares of banks, both State and national, and repealed the statutes taxing the property of such banks. The passage of those statutes was not merely a mode of fixing the taxable value of the property of incorporated banks, but it was providing for the taxation of the shares of such banks. The power of the General Assembly to pass laws taxing shares of incorporated banks in the hands of the stockholders is found in that provision of said section two of article twelve which says that laws shall be passed taxing by a uniform rule all * * * stocks, etc.

Having passed a law for the taxation of all shares, that is all stocks of incorporated banks, it repealed the law taxing the capital or property of the bank, so as to conform to the last sentence in section three of the same article, which says, "So that all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals." The shares of stocks

in a bank are personal property, and are employed by the owner in banking, and therefore should be taxed the same as the property of individuals. To also tax the property of the bank, less the Government bonds owned and held by it, would reduce the dividends to be received by the shareholder or stockholder, and would by such double taxation impose greater burdens upon the property employed in banking than upon the property of individuals.

So as to other corporations, the General Assembly could pass laws under section two of article twelve taxing the stocks of the corporation in the hands of its stockholders, and also taxing the property of the corporation, less the non-taxable bonds owned and held by it, but section four of article thirteen steps in and limits and restricts the power so granted by section two of article twelve, by providing that the taxation of the property of corporations shall be the same as on that of individuals. Aside from the limitations and restrictions in said sections three and four, the General Assembly might tax both the stocks and property of banks and corporations, less untaxable bonds, without thereby imposing double taxation. Owensboro National Bank *v.* Owensboro, 173 U. S., 664, 681, 682.

It is because of said limitations that it is provided in section 2746, Revised Statutes, that where the capital stock of a corporation is taxed in the name of the company, that the stock shall not be taxed and for a like reason that no provision is made for the taxation of the capital of incorporated State banks when the shareholders are taxed on their shares. The same limitations apply to national banks, but as to them there is the additional restriction contained in section 5219, Revised Statutes of the United States.

Instead of section four of article thirteen of the constitution, by a strained construction overriding the intention of the General Assembly in passing the statutes for the listing and valuation of property in the hands of individuals, and making those statutes also applicable to the listing and valuation of the property of corporations against the intention and purpose of the General Assembly, that section was inserted into the constitution for the purpose of clearly authorizing the General Assembly to pass laws for the taxation of the property of individuals, and different laws for the listing and valuation of the property of corporations, provided, however, that the result should be that the taxation of the property of both should be the same, that is, that the burden of taxation should rest equally upon all property in the State, whether held by individuals or corporations, and leaving the General Assembly free to select the methods which in its opinion would best reach that result. The limitations and restrictions in question are as to the result, and not as to the method of taxation. The result must be the same, equality of taxation, but the methods by which such result shall be attained are left to the discretion and sound judgment of the General Assembly. The obligation to pass such laws as will secure equality of taxation is by the constitution placed upon the General Assembly, as was held by this court as to section twenty-one of article two of the constitution in Dalton *v.* State, 43 Ohio St., 660.

Whether the taxation shall be upon the shares of incorporated State banks or upon their capital is also left by the constitution to the General Assembly, but whichever method is adopted, the law must be so framed that the burden upon the capital invested in the State bank will at least equal the burden placed upon national bank shares. The most convenient manner of accomplishing that result is to tax the shares of both kinds of banks, State and national, by the same sections of the statute, as is now done in this State. That method having been adopted by the General Assembly, the courts have no power to interfere and adopt a different one.

The evident object and purpose of the plaintiff in error is to so construe our constitution and statutes in connection with said sections 3701 and 5219, Revised Statutes of the United States, as to escape with a less burden of taxation than is paid upon a like amount of investment in national bank shares. This cannot be done. The burden must be equal. The taxation on national bank shares cannot be greater than upon capital invested in State banks by reason of said section 5219, and it cannot be less by reason of section two of article twelve of our constitution.

31 The statutes of this State providing for the listing and valuation of different classes of property for taxation in and by different modes and agencies, have been held to be constitutional by this court, and by the Supreme Court of the United States. Wagoner *v.* Loomis, 37 Ohio St., 571, and Cummings *v.* National Bank, 101 U. S., 153. The claim of the plaintiff in error that the United States bonds owned and held by it should be deducted from its capital stock before fixing the amount of its resources as a basis for ascertaining the value of each share of its stock, is therefore not tenable. Neither can it be allowed to pay taxes on its capital, less such bonds owned and held by it, and thereby relieve its shareholders from paying taxes on the shares held by them, because there is no statute authorizing the payment of such taxes on its capital stock, and the statute requiring payment of taxes by the shareholders being valid, it cannot be set aside or disregarded by this court. The demurrer to the petition by the court below was therefore properly sustained, and the circuit court was right in affirming the judgment.

Judgment affirmed.

32 STATE OF OHIO, }
City of Columbus, } *ss:*

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the opinion of this court in cause The Cleveland Trust Co. *vs.* M. A. Lander, treasurer, published in the Weekly Law Bulletin, page 297, of date of April 23rd, 1900, and hereto attached, is a true and correct copy thereof, and that said publication was authorized and approved by this court.

In witness whereof I have here- subscribed my name and affixed the seal of said supreme court this fifth day of June, A. D. 1900.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

33 In the Supreme Court of Ohio.

THE CLEVELAND TRUST COMPANY, Plaintiff,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Defendant. } Petition for Writ of Error.

Now comes The Cleveland Trust Company of Cleveland, county of Cuyahoga and State of Ohio, plaintiff herein, and says that on or about the 20th day of March, 1900, this court entered judgment in the above action in favor of the defendant and against this plaintiff upon the sustaining of the demurrer filed by said defendant to the petition of the plaintiff, in which judgment and proceedings had prior thereto in this cause certain errors were committed, to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this defendant prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

THE CLEVELAND TRUST COMPANY,
By GARFIELD, GARFIELD & HOWE,
Its Attorneys.

Writ of error allowed as prayed for.

JOHN A. SHAUCK,
Chief Justice Supreme Court of Ohio.

June 12, 1900.

34 [Endorsed:] # 6972. No. —. Supreme court of Ohio. The Cleveland Trust Company, plaintiff, *vs.* M. A. Lander, as treasurer of Cuyahoga county, Ohio, defendant. Petition for writ of error. Filed Jun- 12, 1900, in supreme court of Ohio. J. B. Allen, clerk. Garfield, Garfield & Howe, Garfield building, Cleveland, O., attorneys for pl'ff.

35 In the Supreme Court of Ohio.

THE CLEVELAND TRUST COMPANY, Plaintiff,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant. } Assignment of Errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors which it avers

were committed by the court in the rendition of its judgment against this plaintiff appearing upon the record herein—that is to say:

I. The court erred in affirming the judgment of the circuit court in sustaining the judgment of the common pleas court on the demurrer of the defendant to the petition of the plaintiff.

II. The court erred in holding and deciding that said The Cleveland Trust Company was not entitled, in making its statement to the auditor of Cuyahoga county, Ohio, under section 2765 of the Revised Statutes of Ohio, to deduct for the purpose of taxation from its capital and surplus the amount of United States Government bonds owned by it, under and by virtue of section 3701 of the Revised Statutes of the United States, as claimed in the original petition of the plaintiff.

And said The Cleveland Trust Company prays the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it has lost by reason of the said judgment.

GARFIELD, GARFIELD & HOWE,
Attorneys for the Cleveland Trust Co.

36 [Endorsed:] No. —. In the supreme court of Ohio. The Cleveland Trust Company, plaintiff, *vs.* M. A. Lander, as treasurer of Cuyahoga county, Ohio, defendant. Assignment of errors. Filed Jun- 12, 1900, in supreme court of Ohio. J. B. Allen, clerk. Garfield, Garfield & Howe, Garfield building, Cleveland, O., attorneys for pl'ff.

37 In the Supreme Court of the United States.

THE CLEVELAND TRUST COMPANY OF CLEVELAND, OHIO, Appellant,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Appellee.
} Prayer for Reversal.

Of October term, in the year of our Lord one thousand nine hundred.

Afterwards, to wit, on the first Monday of ——, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said The Cleveland Trust Company of Cleveland, Ohio, by —— ——, its attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the answer of M. A. Lander, as treasurer of Cuyahoga county, Ohio, and the matters therein contained are not sufficient in law for the said treasurer to have or maintain his defense against the said The Cleveland Trust Company of Cleveland, Ohio. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid was given for the said M. A. Lander, as treasurer of Cuyahoga county, Ohio, whereas by the law of the land the said judgment ought to have been given for the said

The Cleveland Trust Company of Cleveland, Ohio; and the said The Cleveland Trust Company of Cleveland, Ohio, prays that the judgment of the supreme court of Ohio may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it has lost by occasion of the said judgment.

J. K. RICHARDS,
Attorney for Appellant.

38 [Endorsed:] No. 6972. Supreme Court of the United States. The Cleveland Trust Company, plaintiff in error, *vs.* M. A. Lander, as treasurer of Cuyahoga county, defendant in error. Prayer for reversal. Garfield, Garfield & Howe, Garfield building, Cleveland, O., attorneys for pl'ff.

39 In the Supreme Court of Ohio.

THE CLEVELAND TRUST COMPANY, Plaintiff, *vs.* M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant. } Order Allowing Writ of Error.

This 12 day of June, 1900, came the plaintiff, by its attorneys, and filed herein and presented to the court its petition praying for the allowance of a writ of error intended to be urged by it; also its assignment of errors; praying also that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the plaintiff giving bond, according to law, in the sum of — ($10,000), which shall operate as a supersedeas bond.

JOHN A. SHAUCK,
Chief Justice of the Supreme Court of Ohio.

40 [Endorsed:] No. —. Supreme court of Ohio. The Cleveland Trust Company, plaintiff, *vs.* M. A. Lander, as treasurer of Cuyahoga county, Ohio, defendant. Order allowing writ of error. Filed Jun- 12, 1900, in supreme court of Ohio. J. B. Allen, clerk. Garfield, Garfield & Howe, Garfield building, Cleveland, O., attorneys for pl'ff.

41 *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Ohio, Greeting:

Because — the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Ohio, before you or some of you, being the highest court of

law or equity of the said State in which a decision could be had in the said suit between M. A. Lander, as treasurer of Cuyahoga county, Ohio, and The Cleveland Trust Company of Cleveland, Ohio, wherein was drawn in question the validity of an authority exercised under a statute of said State, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of the validity of such authority so exercised, and wherein was drawn in question the construction of a statute of the United States and the decision was against the right, privilege, and exemption specially set up and claimed under such statute, a manifest error hath happened, to the great damage of the said The Cleveland Trust Company of Cleveland, Ohio, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st day of August, 1900, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the
42 United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12 day of June, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fourth.

[Seal of the Circuit Court, Northern Dist. of Ohio.]

IRVIN BELFORD,
Clerk of the Circuit Court of the United States,
Northern District of Ohio, Eastern Division,
By JNO. VAN NOSTRAN, *Deputy.*

Allowed by—
JOHN A. SHAUCK,
Chief Justice Supreme Court of Ohio.

43 [Endorsed:] No. —. Supreme court. The Cleveland Trust Company, plaintiff, *vs.* M. A. Lander, as treasurer of Cuyahoga county, defendant. Writ of error. Filed Jun- 12, 1900, in supreme court of Ohio. J. B. Allen, clerk. Garfield, Garfield & Howe, Garfield building, Cleveland, O., attorneys for pl'ff.

44 The Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

To M. A. Lander, as treasurer of Cuyahoga county, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be held at the city

of Washington, District of Columbia, on the 12 day of July next, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein The Cleveland Trust Company of Cleveland, Ohio, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John A. Shauck, chief justice of the supreme court of the State of Ohio, this 12th day of June, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fourth.

JOHN A. SHAUCK,
Chief Justice of the Supreme Court of Ohio.

45 On this 13th day of June, 1900, service of the within citation was made upon the defendant in error, M. A. Lander, and by us and on his behalf hereby acknowledged, and appearance is hereby entered in said action by the defendant in error.

M. A. LANDER,
As Treasurer of Cuyahoga County, Ohio,
By P. H. KAISER,
County Solicitor,
F. L. TAFT,
Ass't County Solicitor,
His Attorneys.

46 [Endorsed:] No. —. Supreme court. The Cleveland Trust Company, plaintiff, *vs.* M. A. Lander, as treasurer of Cuyahoga county, defendant. Citation. Garfield, Garfield & Howe, Garfield building, Cleveland, O., attorneys for pl'ff.

47 In the Supreme Court of Ohio.

THE CLEVELAND TRUST COMPANY, Plaintiff,
vs.
M. A. LANDER, as Treasurer of Cuyahoga County, Ohio, Defendant.

Know all men by these presents that we, The Cleveland Trust Company, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the defendant, M. A. Lander, as treasurer of Cuyahoga county, in the full and just sum of ten thousand (10,000) dollars, to be paid to the said defendant, M. A. Lander, as treasurer; to which payment, well and truly to be made, we do hereby bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of May, A. D. nineteen hundred.

Whereas lately, in the supreme court of Ohio, in a suit pending in said court between The Cleveland Trust Company, plaintiff in error, and M. A. Lander, as treasurer, defendant in error, a judgment

was rendered against said The Cleveland Trust Company, and said The Cleveland Trust Company having obtained a writ of error, filed a copy thereof in the clerk's office of said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said M. A. Lander, as treasurer, citing and admonishing him to be and
appear at a session of the United States Supreme Court, to be
48 held —:

Now, the condition of this obligation is such that if the said The Cleveland Trust Company shall prosecute said writ of error to effect and answer all damages and costs if they fail to make said plea good, then the above obligation to be void; otherwise to be and remain in full force and effect.

THE CLEVELAND TRUST COMPANY,
By E. G. TILLOTSON, *Treasurer.*

[Seal American Surety Company, New York.]

AMERICAN SURETY COMPANY OF NEW YORK,
By J. J. SULLIVAN, *Res. Vice-Pres't.*

Attest: H. A. GARFIELD,
Act'g Res. Ass't Sec'y.

(Revenue stamp, 25 cents, on original.)

Sealed and delivered in the presence of—

—— ——,
As to prin.
CLARENCE N. WISER,
As to surety.

Approved by—
JOHN A. SHAUCK,
Chief Justice.

[Endorsed:] File — 531. Supreme court. Cleveland Trust Company *vs.* M. A. Lander, as treasurer. Filed May 22, 1900, in supreme court of Ohio. J. B. Allen, clerk. Bond.

49 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

"The regular quarterly meeting of the board of trustees of the American Surety Company of New York was held at the company's office, No. 100 Broadway, in the city of New York, on Wednesday, January 18th, 1899, at 12 o'clock noon.

"The president assumed the chair.

"On motion, David B. Sickels was elected secretary. * * *

"The secretary read the report of the nominating committee as follows:

"To the board of trustees of the American Surety Company of New York:

"GENTLEMEN: The committee appointed by the trustees of this company at their meeting held Wednesday, December 28th, 1898, for the purpose of nominating officers of the company for the ensuing year beg leave to report as follows:

"We nominate for the ensuing year the following gentlemen as resident vice-presidents at Cleveland, Ohio:

"G. A. Garretson,

"J. J. Sullivan,

"H. C. Ranney,

"Horace E. Andrews.

"Resident assistant secretaries at Cleveland, Ohio:

"William B. Uhl,

"Harry A. Garfield,

"Frederick G. Howe.

"Whereupon, on motion, the secretary was instructed to cast one ballot on behalf of the trustees present, and the aforementioned officers, * * * as recommended by the nominating committee, were declared to have been unanimously elected to their respective offices for the ensuing year.

"The following resolution was adopted:

"Resolved, That the resident vice-presidents be, and they hereby are, and each of them is hereby authorized and empowered to execute and deliver and attach the seal of the company to any and all obligations for or on behalf of the company, such obligations, however, to be attested in every instance by the resident assistant secretary."

STATE OF NEW YORK, }
County of New York, } *ss:*

I, W. S. Mackellar, assistant secretary of the American Surety Company of New York, do certify that I have compared the foregoing extracts and transcripts from the record book of the board of trustees of the American Surety Company of New York with the original record of said board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said record book; and I further certify that I have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this second day of January, 1900.

[Seal of American Surety Company, New York.]

W. S. MACKELLAR,
Assistant Secretary.

50 STATE OF OHIO,)
City of Columbus,) ss:

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the bond hereto attached is a true copy of the bond filed in this court May 22nd, 1900, in cause The Cleveland Trust Company *vs.* M. A. Lander, treasurer of Cuyahoga county, Ohio, in which writ of error has been allowed in the Supreme Court of the United States, and that said bond was approved by Hon. John A. Shauck, chief justice of the supreme court of Ohio, on the 22nd day of May, A. D. 1900, and that the tax on said bond was paid by stamp affixed to original on file in this court.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this fifth day of June, A. D. 1900.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

[Endorsed:] No. —. Supreme court of Ohio. The Cleveland Trust Co., plaintiff, *vs.* M. A. Lander, as treasurer of Cuyahoga county, defendant. Bond. Filed May 22, 1900, in supreme court of Ohio. J. B. Allen, clerk.

Endorsed on cover: File No., 17,806. Ohio supreme court. Term No., 321. The Cleveland Trust Company, plaintiff in error, *vs.* M. A. Lander, treasurer of Cuyahoga county, Ohio. Filed June 20th, 1900.